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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/879,840	06/12/2001	Robert M. English	103.1071.01	3690
22883	7590	01/04/2006	EXAMINER	
SWERNOFSKY LAW GROUP PC			PATEL, NIKETA I	
P.O. BOX 390013				
MOUNTAIN VIEW, CA 94039-0013			ART UNIT	PAPER NUMBER
			2181	

DATE MAILED: 01/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/879,840	ENGLISH ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Niketa I. Patel	2181	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 24 October 2005.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-38 is/are pending in the application.
  - 4a) Of the above claim(s) 24-38 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-23 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) 24-38 are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 12 June 2001 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date: _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/05/05</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Newly submitted claims 24-38 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

- a. The originally submitted claims (claims 1-23) are directed to a method and apparatus including (a) at a first device, reading information located locally and remotely and setting values for a variable in response to the information and (b) at second, reading information located locally and remotely and setting values for a variable in response to the information (c) resolving conflicts when the information assigns two inconsistent values to a single variable by determining a higher priority source and a lower priority source.
- b. The newly submitted claims (claims 24-38) are directed to a method and apparatus for (a) determining a list of sources, remote and local, for the configuration variables (b) accessing each source in turn and reading variable names and values from the source and if the variable name is new, assigning a value to the name and if the variable name is not new, replacing or appending a value to an existing value assigned to the name and (c) if the value for the sources have changed repeating the above steps.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 24-38 withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

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2. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

4. Claims 1-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

c. The independent claims 1 and 11 recites the limitation of "***at least one variable***" and "***a single variable***" through the claim language. It is unclear whether these variables are supposed be equivalent or related to each other. In a similar manner claim 15, 19-20 and 22-23 recites the limitation of "***at least one variable***" through out the claim language. The Examiner presumes that each of these variables are different and that they are not related in any way, remainder of the office action is written accordingly. Further clarification on this limitation is kindly requested.

d. The terms "***relatively local***" and "***relatively remote***" in claims 1, 11, 15,19, 20, 22 and 23 are relative terms, which renders the claim indefinite. The terms "***relatively local***" and "***relatively remote***" are not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. These terms renders the location of the information and the information server indefinite.

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- e. Claim 22 recites the limitation "*second information server*" in the last two lines of the claim. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. As far as the examiner can interpret the claims in light of the second paragraph of 35 U.S.C. 112, supra, the claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Toole et al. U.S. Patent Number 6,757,723 B1 (hereinafter "*O'Toole*") and further in view of Holmes et al. U.S. Patent Number: 5,247,683 (hereinafter referred to as "*Holmes*".)

7. Referring to claims 1, 11, 15, *O'Toole* teaches including at a first device [see column 4, lines 62-67, column 5, lines 1-5, 21-25, 'SODA appliances 18'], reading a set of information, at least some of said information located relatively local to said first device and at least some of said information obtained from an information server relatively remote [see column 6, lines 50-55 and column 7, lines 19-40] from said first device, and setting values for at least one variable at said first device in response to said information [see column 7, lines 19-40, 'configuration table']; at a second device [see column 4, lines 62-67, column 5, lines 1-5, 21-25, 'SODA appliances 18'], reading a set of information, at least some of said information located relatively local to said second device and at least some of said information obtained from an information server relatively remote from said second device [see column 6, lines 50-55 and column 7, lines

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19-40], and setting values for at least one variable at said second device in response to said information [see column 7, lines 19-40, ‘configuration table’]; wherein at least some of said information is common to both said first device and said second device [see column 7, lines 19-40 and column 12, lines 41-67, ‘ownership data’.] *O'Toole* is silent regarding resolving conflicts when said information assigns two inconsistent values to a single variable by determining, for any two sources for said information, a higher priority source and a lower priority source, however *Holmes* teaches the above limitation [see *Holmes* column 2, lines 59-66] in order to allow for clashes between changes required by each piece of software to be resolved on a priority basis.

One of ordinary skill in the art at the time of applicant’s invention would have clearly recognized that it is quite advantageous for the system of *O'Toole* to allow for clashes between changes required by each piece of software to be resolved on a priority basis. It is for this reason that one of ordinary skill in the art would have been motivated in resolving conflicts when said information assigns two inconsistent values to a single variable by determining, for any two sources for said information, a higher priority source and a lower priority source in order to allow for clashes between changes required by each piece of software to be resolved on a priority basis.

8. **Referring to claims 2, 12,** teachings of *O'Toole* as modified by the teachings of *Holmes* teaches wherein said information includes configuration information used at start-up by said first device [see *O'Toole* column 7, lines 28-40.]

9. **Referring to claims 3, 13, 16,** teachings of *O'Toole* as modified by the teachings of *Holmes* teaches recording said information at selected times for said first device [see *O'Toole*

column 23, lines 60-65]; at said first device, reading said recorded information in addition to said set of information [see *O'Toole* column 23, lines 60-67 and column 24, lines 1-11]; and comparing said recorded information with at least some of said set of information [see *O'Toole* column 23, lines 60-67 and column 24, lines 1-11 and column 22, lines 1-7.]

10. **Referring to claims 4, 14, 17,** teachings of *O'Toole* as modified by the teachings of *Holmes* teaches wherein said comparison includes a set of resources from which said information can be obtained by said first device [see *O'Toole* figure 3, elements 30,2,34,36] and including re-performing said operations of reading said set of information and setting values until said set of resources is substantially unchanged [see *O'Toole* column 23, lines 60-67 and column 24, lines 1-11 and column 22, lines 1-7.]

11. **Referring to claim 5,** teachings of *O'Toole* as modified by the teachings of *Holmes* teaches wherein said selected times include at each restart of said first device [see *O'Toole* column 6, lines 50-55, 'boot algorithm'.]

12. **Referring to claims 6, 18,** teachings of *O'Toole* as modified by the teachings of *Holmes* teaches wherein said information includes a set of resources from which said information can be obtained by said first device [see *O'Toole* figure 3, elements 30,2,34,36,44.]

13. **Referring to claim 7,** teachings of *O'Toole* as modified by the teachings of *Holmes* teaches wherein said set of resources includes at least a first file at a first said information server [see *O'Toole* figure 3, elements 30,2,34,36] and a second file at a second information server [see *O'Toole* figure 3, element 44 and column 5, lines 35-57.]

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14. **Referring to claim 8,** teachings of *O'Toole* as modified by the teachings of *Holmes* teaches wherein said set of resources includes at least one file at said information server [see *O'Toole* figure 3, element 28.]
15. **Referring to claim 9,** teachings of *O'Toole* as modified by the teachings of *Holmes* teaches wherein said information includes a set of values for named variables, and wherein said resolving conflicts further includes parsing, from said higher priority source, an instruction relating to setting said variable; and performing said instruction from said higher priority source [see *Holmes* column 2, lines 42-66.]
16. **Referring to claim 10,** teachings of *O'Toole* as modified by the teachings of *Holmes* teaches wherein said instruction has a syntactic form indicating one or more of the following operations: replacing a value from said lower priority source with a value form said higher priority source, or appending a value from said higher priority source to a value form said lower priority source [see *Holmes* column 2, lines 42-66.]
17. As far as the examiner can interpret the claims in light of the second paragraph of 35 U.S.C. 112, supra, the claims 19-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Toole et al. U.S. Patent Number 6,757,723 B1 (hereinafter "*O'Toole*".)
18. **Referring to claims 19, 22,** *O'Toole* teaches including at a first device [see column 4, lines 62-67, column 5, lines 1-5, 21-25, 'SODA appliances 18'], reading a set of information, at least some of said information located relatively local to said first device and at least some of said information obtained from an information server relatively remote [see column 6, lines 50-55 and column 7, lines 19-40] from said first device, and setting values for at least one variable

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at said first device in response to said information [see column 7, lines 19-40, 'configuration table']; at a second device [see column 4, lines 62-67, column 5, lines 1-5, 21-25, 'SODA appliances 18'], reading a set of information, at least some of said information located relatively local to said second device and at least some of said information obtained from an information server relatively remote form said second device [see column 6, lines 50-55 and column 7, lines 19-40], and setting values for at least one variable at said second device in response to said information [see column 7, lines 19-40, 'configuration table']; wherein at least some of said information is common to both said first device and said second device [see column 7, lines 19-40 and column 12, lines 41-67, 'ownership data']; wherein said set of information is disposed at a sequence of locations to be read by said first device [see *O'Toole* figure 3, elements 30,2,34,36,44]; further including selecting said sequence of locations in response to a variable settable in response to at least one said information server [see *O'Toole* column 6, lines 50-64]; *O'Toole* is silent regarding wherein a relative priority is defined for a first and a second information server in response to a relative position of said first and second information server in said sequence.

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention that it was old and well known in the computer art to get the advantage of saving valuable network resources by assigning higher priority to a server located in a local network and a lower priority to a server located in a remote network. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to define relative priority for a first and a second information server in response to a relative position of said first and second information server in said sequence.

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19. **Referring to claims 20, 23,** *O'Toole* teaches including at a first device [see column 4, lines 62-67, column 5, lines 1-5, 21-25, 'SODA appliances 18'], reading a set of information, at least some of said information located relatively local to said first device and at least some of said information obtained from an information server relatively remote [see column 6, lines 50-55 and column 7, lines 19-40] from said first device, and setting values for at least one variable at said first device in response to said information [see column 7, lines 19-40, 'configuration table']; at a second device [see column 4, lines 62-67, column 5, lines 1-5, 21-25, 'SODA appliances 18'], reading a set of information, at least some of said information located relatively local to said second device and at least some of said information obtained from an information server relatively remote from said second device [see column 6, lines 50-55 and column 7, lines 19-40], and setting values for at least one variable at said second device in response to said information [see column 7, lines 19-40, 'configuration table']; wherein at least some of said information is common to both said first device and said second device [see column 7, lines 19-40 and column 12, lines 41-67, 'ownership data']; wherein said set of information is disposed at a sequence of locations to be read by said first device [see *O'Toole* figure 3, elements 30,2,34,36,44.] *O'Toole* is silent regarding further including selecting said sequence of locations in response to a variable settable in response to at least one said information server.

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention that it was old and well known in the computer art to get the advantage of being able to provide locations of configuration information by setting a variable in information server response. It would have been obvious to one of ordinary skill in the art at the time of applicant's

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invention to further including selecting said sequence of locations in response to a variable settable in response to at least one said information server to get this advantage.

20. **Referring to claims 21,** teachings of *O'Toole* as modified above teaches wherein said information includes a set of resources from which said information can be obtained by said first device [see *O'Toole* figure 3, elements 30,2,34,36,44.]

***Response to Arguments***

21. Applicant's arguments filed 10/24/2005 have been fully considered but they are not persuasive. The applicant argues that the cancellation of the previously pending claims 1 to 23 is believed to render all the rejections in the office action moot. The examiner respectfully disagrees with this argument since the newly added claims are withdrawn for further consideration and the originally filed claims are still pending.

***Conclusion***

22. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

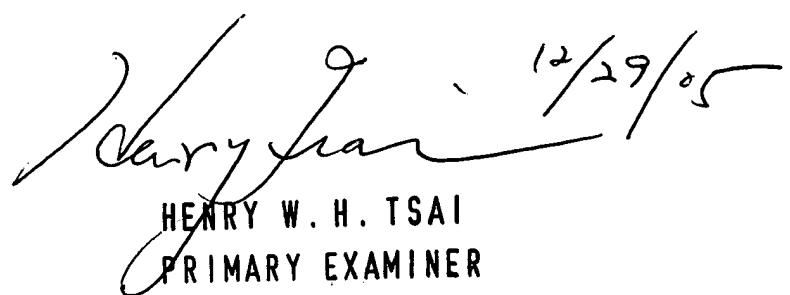
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Niketa I. Patel whose telephone number is (571) 272 4156. The examiner can normally be reached on M-F 8:00 A.M. to 5:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dov Popovici can be reached on (571) 272 4083. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

NP

12/28/2005

  
HENRY W. H. TSAI  
PRIMARY EXAMINER